



*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

NORTHERN REGIONAL OFFICE  
13901 Crown Court, Woodbridge, Virginia 22193  
(703)583-3800

[www.deq.virginia.gov](http://www.deq.virginia.gov)

Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director  
(804) 698-4000

Thomas A. Faha  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
Waterside I, LLC  
FOR  
Waterside Data Center and Davis Drive Extension  
VWP Individual Permit No. 19-0085**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Waterside I, LLC, regarding the Waterside Data Center and Davis Drive Extension, for the purpose of resolving certain violations of State Water Control Law and the applicable regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.
5. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.
6. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
7. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "PEM" means palustrine emergent wetland.
12. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
13. "PFO" means palustrine forested wetland.
14. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.

15. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
16. "Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions. 9 VAC 25-210-10.
17. "Site" or "Property" means the approximately 333-acre mixed-use development known as the Waterside Data and Davis Drive Extension project located near the intersection of Old Ox Road (Route 606) and Sully Road (Route 28), in Loudoun County, Virginia.
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
20. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "Waterside" means Waterside I, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Waterside is a "person" within the meaning of Va. Code § 62.1-44.3.
24. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Waterside owns and manages development of the Site located in Loudoun County, Virginia. Work projects at the Site consist of the construction of four data centers and associated infrastructure.

2. Virginia Water Protection (VWP) Individual Permit IP-16-1700 was issued to Chantilly Crushed Stone, Inc. on February 23, 2018, authorizing specific surface water impacts at the Site as well as impacts at other nearby properties.
3. On May 6, 2019, a Minor Modification and Partial Permit Transfer of IP-16-1700 was authorized, transferring ownership of permanent impacts at the Site to Waterside under VWP Individual Permit No. 19-0085. Transferred impacts consist of 3.19 acres of palustrine forested wetland (PFO), 0.15 acre of palustrine emergent wetland (PEM) and 0.28 acre (1,337 linear feet) of stream channel; and temporary impacts at the Site to 0.02 acre of PFO, <0.01 acre PEM, and 0.01 acre (54 linear feet) of stream channel.
  - a. The May 6, 2019, modification also authorized a net increase of 0.11 acre (145 linear feet) in additional permanent and temporary impacts to surface waters at the Site.
  - b. On December 12, 2019, via email, DEQ authorized additional temporary impacts to 0.05 acre of PEM and 0.01 acre (0.63 linear feet) of stream channel for utility installation.
  - c. On July 12, 2019, unauthorized impacts to 0.13 acre of PFO were reported to DEQ by Waterside. The impacts consisted of 0.06 acres of clearing in one location, and 0.07 acre of clearing and filling in a second location. A corrective action plan was subsequently approved for 0.06 acre of the clearing impacts at the one location, and documentation of the completed restoration was submitted to DEQ on November 6, 2019.
  - d. On January 8, 2020, Waterside reported 0.01 acre (50 linear feet) of unauthorized impacts to stream channel that resulted from a sediment release.
  - e. The Permit was modified June 25, 2020, to incorporate a revised development plan due to changes to the proposed alignment of Davis Drive.
4. On January 9, 2020, DEQ staff conducted an inspection in response to a complaint received from Loudoun County.
5. During the January 9, 2020, inspection, DEQ staff observed that a culvert installed for a permanent road crossing had not been countersunk in accordance with permit conditions, and was not maintaining flow at the outlet of the culvert.
6. VWPP Individual Permit 19-0085 Part I.C.2 states, "No activity shall substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water."
7. During the January 9, 2020, inspection, DEQ staff observed that select locations authorized for temporary impacts had not been restored to pre-construction contours and that one temporary impact location was dormant but had not been stabilized.

8. VWPP Individual Permit 19-0085 Part I.C.15 states, "All temporarily disturbed wetland areas shall be restored to preconstruction conditions within 30 calendar days of completing work in the areas, which shall include re-establishing pre-construction contours, and planting or seeding with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested), except for invasive species identified on DCR's Virginia Invasive Plant Species List. The permittee shall take all appropriate measures to promote and maintain the revegetation of temporarily disturbed surface waters through the second year post-disturbance.

And, VWPP Individual Permit 19-0085 Part I.C.16 states, "All temporarily impacted streams and stream banks shall be restored to their original elevations and contours within 30 calendar days following the construction at that stream segment, and the banks shall be seeded or planted with the same vegetative cover type originally present along the banks, including supplemental erosion control grasses if necessary but not including invasive species identified on DCR's Virginia Invasive Plant Species List. The permittee shall take all appropriate measures to promote and maintain the revegetation of temporarily disturbed surface waters through the second year post-disturbance."

9. During the January 9, 2020, inspection, DEQ staff observed surface water impacts in addition to those authorized by Permit No. 19-0085 or previously reported to DEQ as described above in paragraph C(3). Unauthorized impacts totaled 0.089 acre of wetlands and 114 linear feet of streams. Details of each unauthorized impact are summarized below:
  - a. Unauthorized impact to 0.004 acre of PFO (identified as "Unauthorized Impact 2" in the CAP): This impact is discussed in the narrative and observation #1 of the NOV as 0.07 acre of impact, as reported by Waterside to DEQ in July 2019, and observed by DEQ to be un-corrected at the time of the January 2020 Site inspections. After the NOV, Waterside had the impact survey-located and quantified as 182 square feet (0.004 acre).
  - b. Unauthorized impact to 50 linear feet of stream channel (identified as "Unauthorized Impact 3" in the CAP): This impact area was due to sediment release west of Impact 2 and is discussed in the NOV narrative and NOV observation #1.
  - c. Unauthorized impact to 0.02 acre of PEM (identified as "Unauthorized Impact 4a in the CAP): This impact is located west of authorized temporary impact Utility Impact 1, was due to impact limit exceedance, and is discussed in observation #1 of the NOV as 0.04 acre of unauthorized PEM impacts from clearing activities. After the NOV, Waterside had the impact survey-located and quantified as 0.02 acre.
  - d. Unauthorized impact to 0.003 acre of PFO (identified as "Unauthorized Impact 4b" in the CAP): This impact is located east of authorized temporary Utility Impact 1, was due to impact limit exceedance, and is discussed in observation #1 of the NOV as 0.05 acre of unauthorized PFO impacts from clearing activities. After the NOV,

Waterside had the impact survey-located and quantified as 133 square feet (0.003 acre).

- e. Unauthorized impact to 7 linear feet of stream channel (identified as "Unauthorized Impact 4c" in the CAP): This impact is located at authorized temporary Utility Impact 1, was due to impact limit exceedance, and is discussed in observation #1 of the NOV as <0.01 acre (50 linear feet) of unauthorized stream channel impacts from fill placement. After the NOV, Waterside had the impact survey-located and quantified as 7 linear feet.
  - f. Unauthorized impact to 0.03 acre PFO and 57 linear feet of stream channel: This impact is associated with the culvert-related violations described above in Paragraphs C(5) and C(6). The corrective actions proposed by Waterside, and approved by DEQ, resulted in additional permanent impacts to 0.01 acre of PFO and 21 linear feet of stream channel, and temporary impacts to 0.02 acre PFO and 36 linear feet of stream channel.
  - g. Unauthorized impact to 0.002 acre of PFO and 0.03 acre of PEM: This impact was a planned temporary impact location that was converted to permanent impacts due to the placement of concrete deposits into wetlands.
10. VWPP Individual Permit 19-0085 Part I.A.4 states, "The permittee shall notify the DEQ of any changes in authorized impacts to surface waters or any changes to the design or type of construction activities in surface waters authorized by this permit. DEQ approval shall be required prior to implementing the changes. Any additional impacts, modifications, or changes shall be subject to individual permit review and/or modification of this permit."
11. Additionally, Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit dredging, excavating, or filling of surface waters without a Permit issued by the Director. Waterside does not have a Permit for the activities described above in paragraph C(4) through C(14).
12. On January 24, 2020, DEQ issued NOV No. 2001-001319 to Waterside for the noncompliance described above in paragraphs C(4) through C(15).
13. On January 31, 2020, DEQ staff performed a follow-up inspection of the Site. Requests for corrective actions were provided in the corresponding inspection report dated February 6, 2020.
14. On February 5, 2020, Waterside submitted a written response to the NOV, and on February 6, 2020, DEQ staff met with representatives of Waterside to discuss the NOV, enforcement proceedings, and Waterside's response and corrective action plans for all outstanding noncompliance. DEQ and Waterside agreed that Waterside would submit a corrective action plan (CAP) to DEQ for review, comment, and approval.

15. On February 28, 2020, a proposed CAP was submitted via email to DEQ by Waterside. After revising the CAP in response to comments from DEQ, DEQ approved the final CAP via email dated April 30, 2020.
16. On June 5, 2020, Waterside submitted an email to DEQ providing status updates on the monitoring and other requirements of the CAP. On September 10, 2020, a CAP Update Package dated September 3, 2020, was provided to DEQ, which detailed revisions to the mitigation proposal associated with the Culvert B countersinking correction. On December 11, 2020, documentation was submitted via email showing completion of the corrective actions regarding the countersinking fix at Culvert B.
17. Based on the results of the Site inspections conducted on January 9 and 31, 2020, associated review of DEQ files, the NOV issued on January 24, 2020, Waterside's CAP proposal, and related correspondence and document submissions between DEQ and representatives of Waterside, the Board concludes that Waterside has violated Parts I.A.4, I.C.2, I.C.15, and I.C.16 of VWP Permit No. 19-0085, Va. Code § 62.1-44.15:20, and the Regulations at 9 VAC 25-210-50 as described above in paragraphs C(1) through C(16).
18. Waterside has demonstrated the completion of numerous corrective actions and most of the CAP requirements. In order for Waterside to complete its return to compliance, DEQ staff and representatives of Waterside have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Waterside, and Waterside agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$22,062.50** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Waterside shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Waterside shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Waterside for good cause shown by Waterside, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 2001-001319 dated January 24, 2020. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Waterside admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Waterside consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Waterside declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Waterside to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Waterside shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Waterside shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Waterside shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance;  
and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Waterside.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Waterside has completed all of the requirements of the Order;
  - b. Waterside petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Waterside.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Waterside from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Waterside and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Waterside certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Waterside to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Waterside.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Waterside voluntarily agrees to the issuance of this Order.

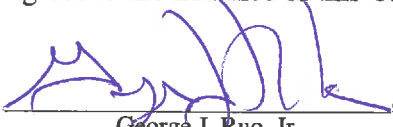
And it is so ORDERED this 12<sup>th</sup> day of May, 2021.



Thomas A. Faha, Regional Director  
Department of Environmental Quality

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Waterside I, LLC voluntarily agrees to the issuance of this Order.

Date: 2/3/2021 By:   
George J. Rufo, Jr. Senior Vice President, Government Services  
Waterside I, LLC

STATE OF MARYLAND  
~~Commonwealth of Virginia~~  
City/County of Howard

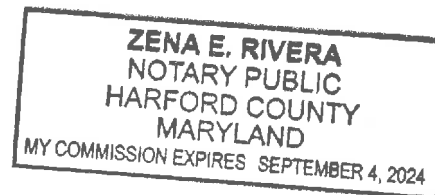
The foregoing document was signed and acknowledged before me this 3 day of  
February, 2021, by George J. Rufo, Jr. who is  
Senior Vice President of Waterside I, LLC, on behalf of the company.

  
Notary Public

148696  
Registration No.

My commission expires: 9/4/2024

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

Waterside I, LLC shall:

1. Within 30 days of the effective date of this Order, submit to DEQ a proof of purchase (bill of sale) of 0.07 wetland credits, and 27 stream credits (or the equivalent 49 Stream Conditions Units as per the CAP), from a DEQ-approved mitigation bank that is authorized and approved by DEQ to sell credits in the area in which the impacts occurred and has credits available (as released by DEQ) to achieve no-net-loss of existing wetland acreage and no-net-loss of function in all surface waters in accordance with 9 VAC 25-210-116.
2. By October 1, 2021, submit to DEQ a written report, with photographic documentation, of the status of restoration monitoring activities for all areas restored under the DEQ-approved CAP due to unauthorized impacts.
  - a. If restoration performance is not approved by DEQ, Waterside shall submit to DEQ for review and approval an alternative CAP within 60 days of notification from DEQ. The DEQ-approved alternative CAP shall then be implemented by Waterside in accordance with the schedule set forth in the alternative CAP. If DEQ determines that additional corrective actions cannot sufficiently restore impacted areas, the alternate CAP submitted to DEQ shall include a proposal to purchase mitigation bank credits or contributions to an in-lieu fee fund to address any remaining corrective action.
3. Unless otherwise specified in this Order, Waterside shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality  
Northern Regional Office  
Attention: Enforcement  
13901 Crown Court  
Woodbridge, VA 22193